

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of:)	
)	
Notice Of Proposed Rulemaking)	MB Docket No. 05-181
Implementation of Section 210 of the)	
Satellite Home Viewer Extension and)	
Reauthorization Act of 2004 to Amend)	
Section 338 of the Communications Act)	

COMMENTS OF MICROCOM

I. INTRODUCTION

While SHVERA Alaska stands to gain much from SHVERA, there are several technical issues and implementation issues raised by the wording of the Act and the Commission's interpretation of that wording that require clarification prior to implementation. We are highlighting those areas in our comments with recommendations for final implementation rules. As much as practical, we want to see non-contiguous states handled within the same administrative and legal framework as the other states.

II. DISCUSSION

1. ***Dual Carriage of analog and digital signals (Paragraph 9 of NPRM).*** Alaska and Hawaii do not seem to benefit from a separate administration of digital and analog services for non contiguous states. Historically, the reason Hawaii and Alaska are treated separately is the services offered through existing DBS providers are different than the services in other states. The goal of rulemaking should be to make those services technically and economically identical and thereby eliminate the need for rules dealing only with Alaska and Hawaii. Nevertheless, the current text of the proposed rules treats analog and digital services as distinctly different seeming to require dual carriage of analog and digital signals. These signals are only different in regard to format and not content when applied to the primary transmission of a broadcast station. If a broadcast station is operating both its digital and analog service in a standard definition format for its primary transmission, dual carriage is not warranted and neither should it be required since the content must be identical by law. In addition, if the DBS provider has the technical ability to provide either a high definition or standard definition signal to a customer's television with a single transmission, then dual carriage serves no purpose.

2. ***Carriage of digital multicast signals (Paragraph 9 of NPRM).*** We see no compelling reason for treating non contiguous states differently when it comes to carriage of multicast signals. In fact mandating carriage of multicast signals would result in a public policy that could potentially offer incentives to broadcasters to provide more standard definition television content. While not specifically mentioned in Federal law or rules associated with the transition to digital, the consuming public is expecting the digital conversion to mean high definition television not more channels of what they already have. Mandating carriage of multicast services only serves to maintain the status quo. Moreover, a broadcast station electing to negotiate retransmission consent, should be prohibited from

conditioning carriage of its primary signal with carriage of other signals in a multiplex.

3. ***Separate elections for analog and digital must carry/retransmission consent (Paragraph 13 of NPRM).*** This should be a single step process as the object of the election is content and not format. Why does there need to be a separate negotiation for a digital signal when to the end consumer the analog transmission of a local network station is identical to the digital transmission of the primary signal? By conducting separate negotiations for analog and digital signals it is implied that there is value in the signal format. Local broadcasters should be negotiating with content and not format. The number of TV households in a given DMA does not change because a specific content is transmitted in two formats. The only negotiation we see that is fair and reasonable is dealing with additional channels if a broadcaster is transmitting a digital multiplex. That content is distinctly different from the primary signal and as we commented earlier, carriage should not be mandated as part of this rulemaking. A decision to negotiate for those channels should be based on market forces and not legislative or administrative rules that require carriage of digital multiplexes.

4. ***Definition of substantially all customers (Paragraph 16 of NPRM).*** We ask the Commission to note that no location in Alaska has an elevation angle less than 10 degrees to the DBS slots at 148 and 157 degrees west longitude. In as much as one DBS provider uses these orbital positions to provide networks in local markets on the west coast using a second dish, it would seem logical to conclude that the same could be done for a local channel package in one of the Alaska DMA's. In addition it would be logical to use the same package to serve parts of Alaska not in a DMA and offers the best solution to providing a local package to "substantially all" subscribers in the state. At a minimum we suggest the Commission define "substantially all" subscribers as not less than those that could be served by the satellite providing primary services within the engineering constraints of the primary or spot beams on that satellite.

5. ***Definition of an available signal, multiple local packages and commercial retransmission consent (Paragraph 18 of NPRM).*** The Commission needs to define when a satellite signal has been "made available". This question is critical when a DBS provider is determining whether they are able to provide a distant network package to a particular consumer. Without a definition of when a satellite signal is available, consumers are likely to be trapped in a "no man's land" of DBS providers not knowing of what they can do, and broadcasters not knowing when distant networks are allowed. Historically, DBS subscribers in Alaska in areas outside the DMA's (and many inside the DMA's) have a significant investment in their satellite system. Given the technical constraints of the existing DBS satellite constellation of one DBS provider (DISH Network), it is likely one or more of the additional Alaska network packages (Juneau and Fairbanks) will be assigned either to spot beams on the 110 satellite or the 148 satellite. Is a signal available to a consumer if they have to invest further in an additional satellite dish and equipment, when today, they can technically receive distant networks as part of their initial investment. Was it the intent of SHVERA to force consumers to spend additional money? We think not so we recommend the term "made available" be conditioned by the statement "at no additional cost to the consumer." In this situation, if the DBS provider wanted to provide and install a second dish, then a local network package would be available to the consumer. If the DBS provider elected not to provide a second dish, then the consumer could elect to receive distant networks or invest additional money to receive an Alaska network package (presuming they are otherwise eligible for distant networks).

Another issue the Commission should consider is the situation when one or more Alaska network packages is technically available to a DBS subscriber. It is highly likely

that Alaska DBS subscribers not in a DMA may be technically able to receive more than one Alaska network package. While the DBS provider is required to provide at least one package in SHVERA, does the subscriber have a choice of which package they want to receive when they can technically get more than one? For example, a Dish Network subscriber in Galena today can get the Anchorage local package (delivered as a distant network package) on the typical dish they would install to receive the DISH Network service. If DISH Network elects to use the Fairbanks local package as the one to provide to their subscribers outside the existing DMA's, will this subscriber be forced to change packages? Conversely, will a new subscriber be able to choose Anchorage? We recommend the Commission publish rules that allow subscribers not in a DMA to subscribe to any one of the Alaska local network packages they can receive.

One final issue the Commission needs to clarify deals with commercial retransmission consent for areas not in a DMA. Today DBS providers have mandatory commercial retransmission consent for stations provided to businesses within the DMA, but no rules exist for areas not in a DMA. The implementation rules should specify mandatory retransmission consent for the network package(s) offered by the DBS provider to commercial establishments in those parts of Alaska not in a DMA. This would make commercial establishments in the parts of Alaska not in a DMA able to abide by the law whereas now they face significant obstacles to subscribe to distant network packages. It would also make them essentially equivalent to establishments in a DMA.

III. SUMMARY

Microcom firmly believes the goal of any legislation and subsequent rulemaking should be to incorporate non contiguous states into the same legal and administrative framework as the other states and to achieve technical and economic parity with those states in access to DBS services. We have to avoid creating an environment where the deployment of new technologies is stifled by administrative rules such as carriage of digital multiplexes and dual carriage of analog and digital services. If such rules are not good for other states, then it should follow they are not good for Alaska. We agree there will always be Alaska unique issues such as areas not in a DMA, but the solution to these issues has to look like the solutions applied everywhere else when it makes sense such as with commercial retransmission consent. Finally, no consumer should be compelled to spend money to meet an administrative requirement prohibiting the importation of distant networks. To require that will make Alaska truly unique since no one else in the country is in that position.

Respectfully Submitted:

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